within any part of India except the State of Jammu and Kashmir are covered by the Act if the parties (in the context of the present case) are Sikhs, wherever they are domiciled. In my opinion no support is given to a contrary interpretation by the fact that the latter part of the subsection limits the operation of the Act in so far as Hindus who are outside India are concerned to those who are domiciled in the territories to which the Act extends. Similarly I am unable to agree that any inference favourable to the construction sought by the plaintiff can be drawn from section 2(1)(c) which seems to me to be merely intended to catch up any class of person who is not a Muslim, Christian, Parsi or Jew and who is not otherwise expressly covered by the Act. The fact that this particular part of the subsection is limited to such residuary persons or classes of persons as are domiciled in the territories to which the Act extends does not, in my opinion, necessarily lend support to the view that the generality of section 1(2) of the Act is in any way affected.

I have, for the reasons that I have given, come to the conclusion that any person who is a Sikh by religion within the meaning of section 2(1)(b) of the Act is subject to the provisions of the Act if he or she (wherever domiciled) goes through a form of marriage in any part of the territories to which the Act extends. That being so, as Brahmpore is in a part of India which is covered by the Act, the marriage which was purported to be performed on the 22nd May 1958 was, in my opinion, invalid by reason of the fact that one of the parties, Bachan Singh, had a spouse living at the relevant time.

The plaintiff, therefore, is in my opinion unable to avail herself of the provisions of section 7(1) of the Immigration Ordinance, as it stood at the relevant date. Her action therefore fails and is dismissed with costs.

Action dismissed.

Solicitors: *Braddell Bros.*

TAN KWANG CHIN v. PUBLIC PROSECUTOR

[A. Cr. J. (Syed Sheh Barakbah J.) September 23, 1959]

[Alor Star—Kedah Criminal Appeal No. 40 of 1959]

Road Traffic — Learner driver — Expired provisional driving licence — Whether holder comes within category of person driving who "has been so permitted and is not disqualified..."

In this case the appellant was an "L" driver who was arrested and charged (1) for driving a car without a driving licence and (2) for driving the said car without being covered by 3rd party risk insurance policy. On his plea of guilty to both charges he was convicted and sentenced to a fine of $50 on each charge, and also disqualified from obtaining a driving licence for 12 months. He appealed on the ground that the owner of the car had in fact a policy of insurance covering 3rd party risks valid at the date of the alleged offence and that he was driving the said car with the owner's consent. These facts were not brought to the notice of the trial Magistrate. The appellant's provisional driving licence had expired some two days previous to the date of the arrest and the point at issue was whether he would still be covered by the policy which authorised *inter alia* any person driving with the insured's permission "provided that the person driving . . . has been so permitted (in accordance with the licensing or other laws . . . to drive) and is not disqualified by order of a Court of Law . . ."

Held: (1) had the facts of the policy been brought to the notice of the trial Magistrate he would not have accepted the appellant's plea of guilty on the 2nd charge;

(2) as the appellant was driving the car with the permission of the policy-holder he was within the category of person who "has been so permitted and is not disqualified by order of a Court of Law or by reason of any enactment or regulation in that behalf from driving the motor vehicle."

Cases referred to:—

(1) *Mumford* v. *Hardy* [1956] 1 W.L.R. 163.

(2) *Edwards* v. *Griffiths* [1953] 1 W.L.R. 1199.

CRIMINAL APPEAL.

Lim Ewe Hock for the appellant.

Abdul Kadir bin Yusof (Federal Counsel) for the respondent.

Syed Sheh Barakbah J.: The appellant was an "L" driver of motor car No. P 8866 belonging to one Tan Eng Pow of Jalan Tunku Putra, Kulim.

On 22nd April 1959 he was arrested and charged (1) for driving the said car without a driving licence on the public road, an offence punishable under Regulation 13(4) of the Motor Vehicles Driving Offences Regulations, 1952, and (2) for driving the said car without being covered by 3rd party risk insurance policy, an offence punishable under Regulation 3(ii) of the Motor Vehicles Third Party Risks Regulation. He pleaded guilty to both charges and was convicted and sentenced to pay a fine of $50 on each charge. He was also disqualified from obtaining a driving licence for 12 months.

The appellant has now appealed to this Court to exercise its discretionary powers of revision in favour of the appellant on the 2nd charge on the ground that Tan Eng Pow, the owner of the car, had in fact a policy of insurance covering third party risks for the car which was valid from 1.5.58 until 30.4.59 and that the appellant was driving the said car with the owner's consent.

The above facts were not brought to the notice of the trial Magistrate. Had he known them, I have no doubt that he would not have accepted the appellant's plea of guilty on the 2nd charge. Be that as it may, the facts were brought before this Court by way of an affidavit filed by Mr. Anthony Louis Brend, the local Manager of the Union Assurance Society Limited, the insurer of the car and at the hearing the learned Deputy Public Prosecutor conceded the point that the car was driven with the owner's consent.

It appeared that the provisional driving licence of the appellant had expired some two days previous to the date of arrest and the point

at issue now is whether he would still be covered by the policy.

The Policy authorised the following persons to drive the vehicle —

(a) The insured.

(b) Any other person who is driving on the Insured's order or with his permission.

Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the Motor Vehicle or has been so permitted and is not disqualified by order of a Court of Law or by reason of any enactment or regulation in that behalf from driving the motor vehicle.

The appellant was driving the said vehicle with the permission of the policy-holder and the 3rd party policy was in force at the material time. Counsel for the appellant submitted that he was within the category of persons who in the words of the proviso contained in the policy "has been so permitted and is not disqualified by order of a Court of Law or by reason of any enactment or regulation in that behalf from driving the motor vehicle." I am inclined to agree with him. I have also had the opportunity of seeing a copy of the judgment of Rigby J. in Penang Criminal Revision No. 9 of 1956 which is identical with the present case in which the learned Judge held the driver to be covered by the terms of his 3rd party policy of insurance. With great respect I entirely agree with his views although there is a slight difference in the wording of the proviso in the policy in this case and that in the case before Rigby J. Here the words "is permitted in accordance with the licensing or other laws or regulations to drive the Motor Vehicle or has been so permitted" were used instead of "holds a licence to drive or has held". To my mind they conveyed the same meaning.

Two cases of almost similar kind were referred to in Rigby J.'s judgment.

In *Mumford* v. *Hardy*[1] Lord Goddard, C.J., remarked —

"It is one thing for an insurance company to say that the company would not insist on the clause in the Policy that the driver must be a licensed driver, if it were a mere matter of his having forgotten to take out a licence; it is quite another thing if he is disqualified by an order of the Court from driving. At the time when this case came before the Justices the driver had not been disqualified by an order of the Court."

His Lordship referred to the case of *Edwards* v. *Griffiths*[2] where the Court decided that a provision in a Policy providing that a driver must hold a licence, or that he must have held one and must not be disqualified from holding or obtaining a licence, meant disqualified by an order of the Court and in the same case at page 1202 the Lord Chief Justice expressed the view that it would be very much better in all these cases, to take the precaution of having not merely the insurance certificate, but the policy itself, before the Court; that can be done by a subpoena on the assured to produce the policy to the Court. He further stated at page 1203

"I do not say that it is an easy point, but, as it seems to me, as between the assured and the insurers we have to construe the policy against the insurers. If there is an ambiguity or a doubt as to the extent of the Policy, we should have to construe it in favour of the assured, that is to say, if the question arose as to the liability of the insurers, we should have to put on the Policy the construction most favourable to the assured and the less favourable construction to the insurers."

For the above reasons I hold the view that the order of the learned Magistrate should be revised under section 325 of the Criminal Procedure Code. I therefore set aside the conviction and sentence and the order of disqualification against the appellant on the 2nd charge. I further order that the fine of $50 be refunded to him.

Conviction and sentence set aside.

Solicitors: *Lim, Lim & Oon.*

BRAATHENS SOUTH AMERICAN & FAR EAST AIRTRANSPORT A.S. v. THE BORNEO COMPANY LTD.

[C. A. (Rose C.J., Buttrose and Chua JJ.) September 30, 1959]

[Singapore — Civil Appeal No. 21 of 1958]

Carriage of Goods by Air — International carriage — General conditions time limit for notice of non-delivery — Liability of carrier — Warsaw Convention relating to International Carriage by Air, 1929, arts. 23, 26 and 29.

In this case the plaintiffs-respondents delivered to the defendants-appellants a case of watches for carriage by air from Geneva to Singapore. The nature and value of the consignment were not in dispute, nor was the fact that the consignment never reached its destination. It was common ground that the carriage in question was an international carriage within the meaning of the Warsaw Convention relating to International Carriage by Air, 1929 and that the provisions of the Convention applied to the contract. It was also agreed that the contract was made subject to the appellants' general conditions of carriage of goods, so long as such conditions were not inconsistent with the provisions of the Convention.

Article 12(1)(c) and (d) of the appellants' general conditions provide: "(c) in the case of non-arrival or non-delivery, the person entitled to delivery must complain to the carrier not later than 120 days after the date of acceptance of the consignment by the carrier. (d) failing complaints or claim in writing as provided in the foregoing sub-paragraphs, no action shall lie against the carrier, save in the case of fraud on its part." The respondents rely on article 23 of the Convention which provides: "Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this convention." Article 26 of the Convention laid down that in the case of delay in the delivery of goods complaint must be made within 14 days from the arrival of the goods; and in the case of damage, within 7 days of the receipt of the goods, and article 29 provided a two-year period of limitation within which any action for damages in respect of a contract of carriage must be instituted.

Held: as the imposition of a time limit of 120 days within which notice of non delivery must be given did tend to relieve the carrier of the liability laid down in the Convention, that provision was a nullity, and therefore the appeal must be dismissed.